

26 specifying parameters that must or may be included in
27 a mobility fee; specifying criteria to be used by a
28 local government in adopting a mobility plan and
29 mobility fee for transportation mitigation
30 improvements; requiring mobility fees to be expended
31 or committed within a specified time period; providing
32 criteria for use by local governments issuing building
33 permits related to mobility fees; encouraging local
34 governments to coordinate certain activities included
35 in mobility plans with other affected local
36 governments for certain purposes; specifying that
37 local governments have the burden of proving that the
38 imposition or amount of a fee or exaction meets
39 certain criteria; prohibiting the courts from using a
40 deferential standard for a specified purpose;
41 providing for mobility fee credits in any mode that
42 creates equivalent capacity which is designated in a
43 local government capital improvements list; providing
44 that the holder of transportation or road impact fee
45 credits is granted specified benefits; providing for
46 full mitigation of a development's transportation
47 impacts in certain instances; amending s. 212.055,
48 F.S.; conforming a cross-reference; providing an
49 effective date.

50

51 Be It Enacted by the Legislature of the State of Florida:

52

53 Section 1. Subsections (32) through (52) of section
 54 163.3164, Florida Statutes, are renumbered as subsections (34)
 55 through (54), respectively, and new subsections (32) and (33)
 56 are added to that section, to read:

57 163.3164 Community Planning Act; definitions.—As used in
 58 this act:

59 (32) "Mobility fee" means a local government fee schedule
 60 established by ordinance and based on the projects included in
 61 the local government's adopted mobility plan.

62 (33) "Mobility plan" means an integrated land use and
 63 alternative mobility transportation plan adopted into a local
 64 government comprehensive plan that promotes a compact, mixed-
 65 use, and interconnected development served by a multimodal
 66 transportation system in an area that is urban in character as
 67 defined in s. 171.031.

68 Section 2. Paragraphs (h) and (i) of subsection (5) of
 69 section 163.3180, Florida Statutes, are amended to read:

70 163.3180 Concurrency.—

71 (5)

72 (h)1. Local governments that continue to implement a
 73 transportation concurrency system, whether in the form adopted
 74 into the comprehensive plan before the effective date of the
 75 Community Planning Act, chapter 2011-139, Laws of Florida, or as

76 | subsequently modified, must:

77 | a. Consult with the Department of Transportation when
78 | proposed plan amendments affect facilities on the strategic
79 | intermodal system.

80 | b. Exempt public transit facilities from concurrency. For
81 | the purposes of this sub-subparagraph, public transit facilities
82 | include transit stations and terminals; transit station parking;
83 | park-and-ride lots; intermodal public transit connection or
84 | transfer facilities; fixed bus, guideway, and rail stations; and
85 | airport passenger terminals and concourses, air cargo
86 | facilities, and hangars for the assembly, manufacture,
87 | maintenance, or storage of aircraft. As used in this sub-
88 | subparagraph, the terms "terminals" and "transit facilities" do
89 | not include seaports or commercial or residential development
90 | constructed in conjunction with a public transit facility.

91 | c. Allow an applicant for a development-of-regional-impact
92 | development order, development agreement, rezoning, or other
93 | land use development permit to satisfy the transportation
94 | concurrency requirements of the local comprehensive plan, the
95 | local government's concurrency management system, and s. 380.06,
96 | when applicable, if:

97 | (I) The applicant in good faith offers to enter into a
98 | binding agreement to pay for or construct its proportionate
99 | share of required improvements in a manner consistent with this
100 | subsection. The agreement must provide that after an applicant

101 makes its contribution or constructs its proportionate share
102 pursuant to this sub-sub-subparagraph, the project shall be
103 considered to have mitigated its transportation impacts and be
104 allowed to proceed.

105 (II) The proportionate-share contribution or construction
106 is sufficient to accomplish one or more mobility improvements
107 that will benefit a regionally significant transportation
108 facility. A local government may accept contributions from
109 multiple applicants for a planned improvement if it maintains
110 contributions in a separate account designated for that purpose.
111 A local government may not prevent a single applicant from
112 proceeding after the applicant has satisfied its proportionate-
113 share contribution.

114 d. Provide the basis upon which the landowners will be
115 assessed a proportionate share of the cost addressing the
116 transportation impacts resulting from a proposed development.

117 2. An applicant shall not be held responsible for the
118 additional cost of reducing or eliminating deficiencies. When an
119 applicant contributes or constructs its proportionate share
120 pursuant to this paragraph, a local government may not require
121 payment or construction of transportation facilities whose costs
122 would be greater than a development's proportionate share of the
123 improvements necessary to mitigate the development's impacts.

124 a. The proportionate-share contribution shall be
125 calculated based upon the number of trips from the proposed

126 development expected to reach roadways during the peak hour from
127 the stage or phase being approved, divided by the change in the
128 peak hour maximum service volume of roadways resulting from
129 construction of an improvement necessary to maintain or achieve
130 the adopted level of service, multiplied by the construction
131 cost, at the time of development payment, of the improvement
132 necessary to maintain or achieve the adopted level of service.

133 b. In using the proportionate-share formula provided in
134 this subparagraph, the applicant, in its traffic analysis, shall
135 identify those roads or facilities that have a transportation
136 deficiency in accordance with the transportation deficiency as
137 defined in subparagraph 4. The proportionate-share formula
138 provided in this subparagraph shall be applied only to those
139 facilities that are determined to be significantly impacted by
140 the project traffic under review. If any road is determined to
141 be transportation deficient without the project traffic under
142 review, the costs of correcting that deficiency shall be removed
143 from the project's proportionate-share calculation and the
144 necessary transportation improvements to correct that deficiency
145 shall be considered to be in place for purposes of the
146 proportionate-share calculation. The improvement necessary to
147 correct the transportation deficiency is the funding
148 responsibility of the entity that has maintenance responsibility
149 for the facility. The development's proportionate share shall be
150 calculated only for the needed transportation improvements that

151 are greater than the identified deficiency.

152 c. When the provisions of subparagraph 1. and this
153 subparagraph have been satisfied for a particular stage or phase
154 of development, all transportation impacts from that stage or
155 phase for which mitigation was required and provided shall be
156 deemed fully mitigated in any transportation analysis for a
157 subsequent stage or phase of development. Trips from a previous
158 stage or phase that did not result in impacts for which
159 mitigation was required or provided may be cumulatively analyzed
160 with trips from a subsequent stage or phase to determine whether
161 an impact requires mitigation for the subsequent stage or phase.

162 d. In projecting the number of trips to be generated by
163 the development under review, any trips assigned to a toll-
164 financed facility shall be eliminated from the analysis.

165 e. The applicant shall receive a credit on a dollar-for-
166 dollar basis for impact fees, mobility fees, and other
167 transportation concurrency mitigation requirements paid or
168 payable in the future for the project. The credit shall be
169 reduced up to 20 percent by the percentage share that the
170 project's traffic represents of the added capacity of the
171 selected improvement, or by the amount specified by local
172 ordinance, whichever yields the greater credit.

173 3. This subsection does not require a local government to
174 approve a development that, for reasons other than
175 transportation impacts, is not qualified for approval pursuant

176 to the applicable local comprehensive plan and land development
177 regulations.

178 4. As used in this subsection, the term "transportation
179 deficiency" means a facility or facilities on which the adopted
180 level-of-service standard is exceeded by the existing,
181 committed, and vested trips, plus additional projected
182 background trips from any source other than the development
183 project under review, and trips that are forecast by established
184 traffic standards, including traffic modeling, consistent with
185 the University of Florida's Bureau of Economic and Business
186 Research medium population projections. Additional projected
187 background trips are to be coincident with the particular stage
188 or phase of development under review.

189 (i) If a local government elects to repeal transportation
190 concurrency, the local government may ~~it is encouraged to~~ adopt
191 an alternative mobility planning and fee ~~funding~~ system, as
192 provided in s. 163.31803, or an alternative system that is not
193 mobility plan and fee based. The local government ~~that uses one~~
194 ~~or more of the tools and techniques identified in paragraph (f).~~
195 ~~Any alternative mobility funding system adopted~~ may not use the
196 alternative system ~~be used~~ to deny, time, or phase an
197 application for site plan approval, plat approval, final
198 subdivision approval, building permits, or the functional
199 equivalent of such approvals provided that the developer agrees
200 to pay for the development's identified transportation impacts

201 via the funding mechanism implemented by the local government.
 202 The revenue from the funding mechanism used in the alternative
 203 system must be used to implement the needs of the local
 204 government's plan which serves as the basis for the fee imposed.
 205 The alternative system ~~A mobility fee-based funding system~~ must
 206 comply with s. 163.31801 governing impact fees. An alternative
 207 system may not impose ~~that is not mobility fee-based shall not~~
 208 ~~be applied in a manner that imposes~~ upon new development any
 209 responsibility for funding an existing transportation deficiency
 210 as defined in paragraph (h).

211 Section 3. Paragraph (h) of subsection (6) of section
 212 163.31801, Florida Statutes, is redesignated as paragraph (g),
 213 and paragraph (a) of subsection (4), paragraph (a) of subsection
 214 (5), and paragraph (g) of subsection (6) of that section are
 215 amended, to read:

216 163.31801 Impact fees; short title; intent; minimum
 217 requirements; audits; challenges.—

218 (4) At a minimum, each local government that adopts and
 219 collects an impact fee by ordinance and each special district
 220 that adopts, collects, and administers an impact fee by
 221 resolution must:

222 (a) Ensure that the calculation of the impact fee is based
 223 on the most recent and localized data available within the
 224 previous 12 months before adoption.

225 (5) (a) Notwithstanding any charter provision,

226 comprehensive plan policy, ordinance, development order,
 227 development permit, or resolution, the local government or
 228 special district that requires any improvement or contribution
 229 must credit against the collection of the impact fee any
 230 contribution, whether identified in a development order,
 231 proportionate share agreement, or any ~~other~~ form of exaction,
 232 related to public facilities or infrastructure, including
 233 monetary contributions, land dedication, site planning and
 234 design, or construction. Any contribution must be applied on a
 235 dollar-for-dollar basis at fair market value to reduce any
 236 impact fee collected for the general category or class of public
 237 facilities or infrastructure for which the contribution was
 238 made.

239 (6) A local government, school district, or special
 240 district may increase an impact fee only as provided in this
 241 subsection.

242 ~~(g) A local government, school district, or special~~
 243 ~~district may increase an impact fee rate beyond the phase-in~~
 244 ~~limitations established under paragraph (b), paragraph (c),~~
 245 ~~paragraph (d), or paragraph (e) by establishing the need for~~
 246 ~~such increase in full compliance with the requirements of~~
 247 ~~subsection (4), provided the following criteria are met:~~

248 ~~1. A demonstrated need study justifying any increase in~~
 249 ~~excess of those authorized in paragraph (b), paragraph (c),~~
 250 ~~paragraph (d), or paragraph (e) has been completed within the 12~~

251 ~~months before the adoption of the impact fee increase and~~
252 ~~expressly demonstrates the extraordinary circumstances~~
253 ~~necessitating the need to exceed the phase-in limitations.~~

254 ~~2. The local government jurisdiction has held not less~~
255 ~~than two publicly noticed workshops dedicated to the~~
256 ~~extraordinary circumstances necessitating the need to exceed the~~
257 ~~phase-in limitations set forth in paragraph (b), paragraph (c),~~
258 ~~paragraph (d), or paragraph (e).~~

259 ~~3. The impact fee increase ordinance is approved by at~~
260 ~~least a two-thirds vote of the governing body.~~

261 Section 4. Section 163.31803, Florida Statutes, is created
262 to read:

263 163.31803 Mobility plans.—

264 (1) This section establishes the method for the adoption
265 and implementation of a mobility plan as an alternative to
266 transportation concurrency under s. 163.3180(5).

267 (2) A mobility fee-based funding system must comply with
268 this section and s. 163.31801 governing impact fees.

269 (3) A mobility plan:

270 (a) May include existing and emerging transportation
271 technologies that reduce dependence on motor vehicle travel
272 capacity.

273 (b) May not be based solely on adding motor vehicle
274 capacity.

275 (c) Must reflect modes of travel and emerging

276 transportation technologies reducing reliance on motor vehicle
277 capacity established in the local government's comprehensive
278 plan.

279 (d) Must identify multimodal projects consisting of
280 improvements, services, and programs which increase capacity
281 needed to meet future travel demands.

282 (4) A transportation impact fee or fee that is not a
283 mobility-based fee may not be imposed within the area designated
284 for the imposition of a mobility fee by a local government
285 mobility plan.

286 (5) A mobility fee, fee update, or fee increase must be
287 based on the mobility plan, may not rely solely on motor vehicle
288 capacity, and must be used exclusively to implement the mobility
289 plan.

290 (6) A mobility fee must be updated at least once within 5
291 years after the date the fee is adopted or after it is updated.
292 A mobility fee that is not updated as provided in this
293 subsection is void. A local government considering a mobility
294 fee update may not consider annual inflation adjustments or any
295 phased-in fees to meet the requirements of this subsection.

296 (7) A local government adopting a mobility plan and
297 mobility fee system for transportation mitigation must comply
298 with all of the following:

299 (a) Beginning September 1, 2023, a new mobility fee, fee
300 update, or fee increase must be based on an adopted mobility

301 plan.

302 (b) In addition to meeting the requirements of s.
303 163.31801, mobility fees must be calculated using all of the
304 following criteria:

305 1. Projected increases in population, employment, and
306 motor vehicle travel demand and per person travel demand.

307 2. Areawide road levels of service or quality of service
308 standards and multimodal quality of service standards for modes
309 of travel included in the mobility plan.

310 3. Multimodal projects identified in the mobility plan
311 which are attributable to, and meet the travel demands of, new
312 development and redevelopment and which include capacities based
313 on service standards and projected costs.

314 4. An evaluation of current and future travel conditions
315 to ensure that new development and redevelopment are not charged
316 for backlog and associated capacity deficiencies.

317 5. An evaluation of the projected increases in per person
318 travel demand and system capacity to calculate the fair share of
319 multimodal capacity and the costs of multimodal projects which
320 are assignable and attributable to new development and
321 redevelopment.

322 6. Per person travel demand corresponding to the
323 transportation impact assigned to uses included in the mobility
324 fee schedule based on trip generation, new trips, per person
325 travel demand, per person trip lengths, excluded travel on

326 limited access facilities, and adjustments for origin and
327 destination of travel.

328 7. The mobility fee may not be based on recurring
329 transportation costs.

330 8. The mobility fee must fully mitigate the subject
331 development or redevelopment's full transportation impacts.

332 (c) Per person travel demand data must be localized,
333 reflecting differences in the need for multimodal projects and
334 travel within urban areas based on reduced trip lengths and the
335 availability of existing transportation infrastructure.

336 (d) A local government may recognize reductions in per
337 person travel demand for affordable housing and economic
338 development projects.

339 (e) Any calculation of per person travel demand must
340 ensure that new development and redevelopment are not assessed
341 twice for the same transportation impact.

342 (8) A mobility fee that is collected for a specific
343 transportation mitigation improvement must be expended or
344 committed for an identified project within 6 years after the
345 date of collection or must be returned to the applicant who paid
346 the fee. For purposes of this subsection, an expenditure is
347 deemed committed if the preliminary design, right-of-way, or
348 detailed design for the project is completed and construction
349 will commence within 2 years.

350 (9) A local government issuing a building permit for

351 development within its jurisdiction shall develop a mobility fee
352 based on the adopted mobility plan to ensure that the
353 transportation impacts of the new development or redevelopment
354 project are fully mitigated. Another local government may not
355 charge new development or redevelopment for the same travel
356 demand, capacity, and improvements assessed by the governmental
357 entity that issued the building permit.

358 (10) Local governments are encouraged to coordinate with
359 other affected local governments to identify multimodal
360 projects, capacity improvements, full costs, and timing of
361 improvements in mobility plans to address intrajurisdictional
362 and extrajurisdictional impacts. The coordination is encouraged
363 to identify measurable factors addressing all of the following:

364 (a) The share of per person travel demand which each local
365 government should assess.

366 (b) The proportion of costs of multimodal projects to be
367 included in the mobility fee calculations.

368 (c) Which entity will construct the multimodal projects.

369 (d) If necessary, whether the projected future ownership
370 of the multimodal project and underlying facility should be
371 transferred from the affected local government to the local
372 government adopting the mobility fee.

373 Any mobility fee, impact fee, or other transportation mitigation
374 exaction other than the one assessed by the local government
375 issuing the building permits must include the same benefit

376 reductions in per person travel demand for affordable housing,
 377 economic development, urban areas, and mixed-use development.

378 (11) A local government adopting a mobility fee system and
 379 a local government assessing a transportation exaction for
 380 intrajurisdictional and extrajurisdictional impacts has the
 381 burden of proving by a preponderance of the evidence that the
 382 imposition or amount of the fee or exaction meets the
 383 requirements of this section. A court may not use a deferential
 384 standard for the benefit of the local government.

385 (12) Mobility fee credits must comply with s. 163.31801 in
 386 any mode that creates equivalent capacity which is designated in
 387 a local government capital improvements list.

388 (13) The holder of any transportation or road impact fee
 389 credits granted under s. 163.3180, s. 380.06, or other
 390 provision, which were in existence before the adoption of the
 391 mobility fee-based funding system, is entitled to the full
 392 benefit of the intensity and density prepaid by the credit
 393 balance as of the date it was first established.

394 (14) Payment by a development of the authorizing local
 395 government's adopted mobility fee is deemed to fully mitigate
 396 the development's full transportation impacts.

397 Section 5. Paragraph (d) of subsection (2) of section
 398 212.055, Florida Statutes, is amended to read:

399 212.055 Discretionary sales surtaxes; legislative intent;
 400 authorization and use of proceeds.—It is the legislative intent

401 that any authorization for imposition of a discretionary sales
 402 surtax shall be published in the Florida Statutes as a
 403 subsection of this section, irrespective of the duration of the
 404 levy. Each enactment shall specify the types of counties
 405 authorized to levy; the rate or rates which may be imposed; the
 406 maximum length of time the surtax may be imposed, if any; the
 407 procedure which must be followed to secure voter approval, if
 408 required; the purpose for which the proceeds may be expended;
 409 and such other requirements as the Legislature may provide.
 410 Taxable transactions and administrative procedures shall be as
 411 provided in s. 212.054.

412 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

413 (d) The proceeds of the surtax authorized by this
 414 subsection and any accrued interest shall be expended by the
 415 school district, within the county and municipalities within the
 416 county, or, in the case of a negotiated joint county agreement,
 417 within another county, to finance, plan, and construct
 418 infrastructure; to acquire any interest in land for public
 419 recreation, conservation, or protection of natural resources or
 420 to prevent or satisfy private property rights claims resulting
 421 from limitations imposed by the designation of an area of
 422 critical state concern; to provide loans, grants, or rebates to
 423 residential or commercial property owners who make energy
 424 efficiency improvements to their residential or commercial
 425 property, if a local government ordinance authorizing such use

426 is approved by referendum; or to finance the closure of county-
427 owned or municipally owned solid waste landfills that have been
428 closed or are required to be closed by order of the Department
429 of Environmental Protection. Any use of the proceeds or interest
430 for purposes of landfill closure before July 1, 1993, is
431 ratified. The proceeds and any interest may not be used for the
432 operational expenses of infrastructure, except that a county
433 that has a population of fewer than 75,000 and that is required
434 to close a landfill may use the proceeds or interest for long-
435 term maintenance costs associated with landfill closure.
436 Counties, as defined in s. 125.011, and charter counties may, in
437 addition, use the proceeds or interest to retire or service
438 indebtedness incurred for bonds issued before July 1, 1987, for
439 infrastructure purposes, and for bonds subsequently issued to
440 refund such bonds. Any use of the proceeds or interest for
441 purposes of retiring or servicing indebtedness incurred for
442 refunding bonds before July 1, 1999, is ratified.

443 1. For the purposes of this paragraph, the term

444 "infrastructure" means:

445 a. Any fixed capital expenditure or fixed capital outlay
446 associated with the construction, reconstruction, or improvement
447 of public facilities that have a life expectancy of 5 or more
448 years, any related land acquisition, land improvement, design,
449 and engineering costs, and all other professional and related
450 costs required to bring the public facilities into service. For

451 purposes of this sub-subparagraph, the term "public facilities"
452 means facilities as defined in s. 163.3164(41) ~~s. 163.3164(39)~~,
453 s. 163.3221(13), or s. 189.012(5), and includes facilities that
454 are necessary to carry out governmental purposes, including, but
455 not limited to, fire stations, general governmental office
456 buildings, and animal shelters, regardless of whether the
457 facilities are owned by the local taxing authority or another
458 governmental entity.

459 b. A fire department vehicle, an emergency medical service
460 vehicle, a sheriff's office vehicle, a police department
461 vehicle, or any other vehicle, and the equipment necessary to
462 outfit the vehicle for its official use or equipment that has a
463 life expectancy of at least 5 years.

464 c. Any expenditure for the construction, lease, or
465 maintenance of, or provision of utilities or security for,
466 facilities, as defined in s. 29.008.

467 d. Any fixed capital expenditure or fixed capital outlay
468 associated with the improvement of private facilities that have
469 a life expectancy of 5 or more years and that the owner agrees
470 to make available for use on a temporary basis as needed by a
471 local government as a public emergency shelter or a staging area
472 for emergency response equipment during an emergency officially
473 declared by the state or by the local government under s.
474 252.38. Such improvements are limited to those necessary to
475 comply with current standards for public emergency evacuation

476 shelters. The owner must enter into a written contract with the
477 local government providing the improvement funding to make the
478 private facility available to the public for purposes of
479 emergency shelter at no cost to the local government for a
480 minimum of 10 years after completion of the improvement, with
481 the provision that the obligation will transfer to any
482 subsequent owner until the end of the minimum period.

483 e. Any land acquisition expenditure for a residential
484 housing project in which at least 30 percent of the units are
485 affordable to individuals or families whose total annual
486 household income does not exceed 120 percent of the area median
487 income adjusted for household size, if the land is owned by a
488 local government or by a special district that enters into a
489 written agreement with the local government to provide such
490 housing. The local government or special district may enter into
491 a ground lease with a public or private person or entity for
492 nominal or other consideration for the construction of the
493 residential housing project on land acquired pursuant to this
494 sub-subparagraph.

495 f. Instructional technology used solely in a school
496 district's classrooms. As used in this sub-subparagraph, the
497 term "instructional technology" means an interactive device that
498 assists a teacher in instructing a class or a group of students
499 and includes the necessary hardware and software to operate the
500 interactive device. The term also includes support systems in

501 | which an interactive device may mount and is not required to be
502 | affixed to the facilities.

503 | 2. For the purposes of this paragraph, the term "energy
504 | efficiency improvement" means any energy conservation and
505 | efficiency improvement that reduces consumption through
506 | conservation or a more efficient use of electricity, natural
507 | gas, propane, or other forms of energy on the property,
508 | including, but not limited to, air sealing; installation of
509 | insulation; installation of energy-efficient heating, cooling,
510 | or ventilation systems; installation of solar panels; building
511 | modifications to increase the use of daylight or shade;
512 | replacement of windows; installation of energy controls or
513 | energy recovery systems; installation of electric vehicle
514 | charging equipment; installation of systems for natural gas fuel
515 | as defined in s. 206.9951; and installation of efficient
516 | lighting equipment.

517 | 3. Notwithstanding any other provision of this subsection,
518 | a local government infrastructure surtax imposed or extended
519 | after July 1, 1998, may allocate up to 15 percent of the surtax
520 | proceeds for deposit into a trust fund within the county's
521 | accounts created for the purpose of funding economic development
522 | projects having a general public purpose of improving local
523 | economies, including the funding of operational costs and
524 | incentives related to economic development. The ballot statement
525 | must indicate the intention to make an allocation under the

HB 235

2023

526 | authority of this subparagraph.

527 | Section 6. This act shall take effect July 1, 2023.